



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-V-G-

DATE: APR. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) §§ 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status. The Director concluded that the Petitioner did not establish that he suffered substantial abuse as the victim of qualifying criminal activity. We dismissed the Petitioner's appeal and denied a subsequent motion to reopen and to reconsider.

The matter is again before us on a motion to reopen and to reconsider. On motion, the Petitioner submits a brief, medical records, and letters of support, and resubmits copies of his personal statements and mental health evaluations. The Petitioner claims that we erred in our previous decisions because we should consider his mental health "as a whole" and the impact that being a victim of qualifying criminal activity has on his preexisting condition.

Upon review, we will deny the motion to reopen and to reconsider.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

A. Motion to Reopen

On motion, the Petitioner recounts the events for which he was a victim and reiterates his worries about leaving his wife alone at their residence while he is at work, his distrust of others and being socially withdrawn, and the effect on his children for having witnessed violence. The Petitioner also reiterates that his feelings of anxiety have been exacerbated and he suffers from generalized anxiety disorder, major depressive disorder, and post-traumatic stress disorder as discussed by a Licensed Professional Counselor (LPC).

The Petitioner also submits with his motion new evidence, including statements by his spouse, brother, friends, and co-workers. The Petitioner's spouse discusses the increasing depression she has endured and her fear of retribution by her brother-in-law's ex-girlfriend, resulting in her taking medication and their family relocating. She also states that the Petitioner would call her from his work "every couple of hours to make sure [she] and the[ir] children were safe." She further states that the Petitioner would leave work early about three times each week and return to their residence because "he felt that [they] were safe when he was home." The Petitioner's spouse relays that the Petitioner is sometimes "unresponsive" and quiet, and he does not socialize with family members or friends since his victimization.

In their statements, the Petitioner's friends and co-workers generally describe the Petitioner as depressed, quiet, reserved, and unsocial. They also describe the Petitioner as becoming upset when he received threatening telephone calls from his brother's ex-girlfriend, whom they refer to as being "aggressive," rude, and affiliated with gang members. They further indicate that the Petitioner leaves work early because he fears for his family's safety.

The new evidence submitted on motion is cumulative to evidence already submitted and considered; it does not offer additional facts or information that overcomes our previous conclusion and establishes that the Petitioner has suffered substantial abuse as a victim of qualifying criminal activity. When making such an assessment, we look at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm, and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of preexisting conditions. 8 C.F.R. § 214.14(b)(1).

Although we do not minimize the impact of the qualifying crime on the Petitioner and his family members, the Petitioner has not established that he has sustained permanent, physical injuries or that the conduct of his brother's ex-girlfriend has been part of a pattern of violence directed at him, his spouse, or children. In addition, the discussions regarding the Petitioner having to miss work or leave early do not demonstrate that the severity of the harm to the Petitioner's emotional wellbeing is sufficient to establish substantial abuse under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). As discussed in our previous decision, the LPC reported that the Petitioner's brother's ex-girlfriend "directly threatened" him in 2011. Although some of the

Petitioner's friends and co-workers generally discuss the Petitioner becoming upset at work upon receiving threatening telephone calls, they do not provide further probative details of the alleged threats. Moreover, the Petitioner's brother generally relays the events with his ex-girlfriend, resulting in the Petitioner's victimization, however, he does not include a discussion of any threats made to or against the Petitioner since the incident. Accordingly, the new facts offered on motion do not overcome our prior determination.

B. Motion to Reconsider

The Petitioner's submission does not meet the requirements for a motion to reconsider. Like his previous motion to reconsider, the Petitioner does not cite any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy. In addition, a review of the record indicates that our prior decisions were supported by the evidence in the record at the time, and we did not ignore or mischaracterize the Petitioner's evidence, or apply an erroneous standard of review. Accordingly, we must deny the motion to reconsider for failing to meet the applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

The Petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion to reopen and to reconsider will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied

Cite as *Matter of E-V-G-*, ID# 16370 (AAO Apr. 19, 2016)